

OFFICE OF GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 13-35

March 13, 2013

To: All Regional Directors, Officers-in-Charge,
and Resident Officers

From: Anne Purcell, Associate General Counsel

Subject: Collyer and Dubo Deferral Review

This Memorandum asks that Regions generate a list of all the cases that have been deferred for over a year, ensure that show cause letters have been sent in each case, and report the status of these cases at the conclusion of this process.

In 2002, the General Counsel initiated a program to reduce the number of cases in deferred status for extended periods of time. In connection with that program, the Agency has periodically undertaken nationwide reviews of these cases. As a result of these surveys, the Agency substantially reduced its inventory of deferred charges by, where appropriate, dismissing or approving their withdrawal or removing them from deferral status for further processing.

Accordingly, in order to ensure that the policy considerations underlying *Collyer*¹ and *Dubo*,² which provide for the expeditious and private settlement of industrial disputes, are being met in these cases, I am requesting that Regions report to us the status of all cases pending for more than one year in deferral status. Thus, Regions should require parties to submit evidence establishing that these grievances continue to be actively processed.³ In Memoranda GC 12-01 and OM 12-43, Regions were instructed to send "show cause" letters to parties, requesting their position on whether deferral should be revoked after a case with *Section 8(a)(1) or (3) discriminatees* has been deferred for one year. This memorandum extends this process to all cases that have been deferred for over a year, and provides further guidance for how cases should be handled after the show cause letters have been sent.

Regions should compile a list of those open cases that were deferred under *Collyer* or *Dubo* a year or more prior to the date of this Memorandum, setting forth the case name, case number, and charge allegations.

¹ *Collyer Insulated Wire*, 192 NLRB 837 (1971).

² *Dubo Mfg. Corp.*, 142 NLRB 431 (1963).

³ This is also a reminder to continue the 90 day status checks of all cases in deferral status.

A list of such cases can be generated in NxGen by going into the Analytics function, clicking on the link for Regional Management and clicking the Deferred C Cases tab. Regions should then enter the appropriate information into the drop down boxes, selecting “in effect” for the “action status” box, leaving the box following the word “Between” blank, selecting “3/12/2012” in the following box, and clicking the “go” button. After the list is generated, Regions should click on the button with an arrow pointing to the right followed by an asterisk to display the entire list. The list should then be downloaded onto an Excel spreadsheet. Screen shots, displaying these instructions are attached.

For each of the cases, a “show cause” letter should then be sent to the parties, in addition to the alleged discriminatee (or representative)⁴ if the case alleges 8(a)(1) or (3) discrimination, requesting their position on whether deferral should be revoked.⁵ The NxGen template is available under the Document Type DEF and the Document Subtype Deferral Status Check - 1 year. The template name is Show Cause Letter - 1 year. A copy of this letter is attached as Exhibit A. If the case alleges 8(a)(1) or (3) discrimination, the Region should make sure that it includes the alleged discriminatee (or representative) among the parties being served with the letter.

If neither the charging party nor the alleged discriminatee (if the charge alleges an 8(a)(1) or (3) violation) responds to the show cause letter, they should be sent a second letter, notifying them that their failure to respond will result in dismissal of the charge. A copy of this letter is attached as Exhibit B. The NxGen template is available under the Document Type DEF, the Document Subtype Deferral Status Check, and the Document Template Deferral Check - No response. In 8(a)(1) or (3) cases the Region should also attempt to contact the alleged discriminatee by telephone. If neither the charging party nor the alleged discriminatee responds to this letter, and we are unable to telephonically contact the alleged discriminatee, the charge may be dismissed. Section 8(a)(1) cases that don’t involve discriminatees, and 8(a)(5) cases that the Region believes do not significantly impact employees’ Section 7 rights, may also be dismissed for a failure to respond.

As set forth in Memoranda GC-12-01 and OM 12-43, how the Region processes the case in the event that one of the parties contends that deferral should be revoked depends in large part upon the allegations being deferred. If the charge alleges 8(a)(1) or (3) discrimination, and the charging party or discriminatee requests that processing of the case be resumed, the case should, absent good cause to the contrary, be taken out of deferral status and the investigation resumed. If the Region subsequently concludes

⁴ If the discriminatee is represented, the skip counsel rules apply.

⁵ While all cases that have been pending for more than one year should be included in the report to DAGC Peter Margolies, if the Region has already taken action on these cases with which the “show cause” letter would be inconsistent, it will not be necessary to send this letter. For example, if the Region has already decided to dismiss the charge due to the failure of the charging party and discriminatee to respond to past inquiries, it may do so.

that the case has merit and that complaint should issue notwithstanding the Region's earlier deferral of the charge, it should submit the case to Advice. If the Region determines the case lacks merit, it may dismiss the charge.

As noted in the above Memoranda, some 8(a)(5) cases can implicate Section 7 rights or have as serious an economic impact on employees as a Section 8(a)(1) and (3) charge. An example of such a charge would be a layoff of employees as a result of unilateral subcontracting of bargaining unit work. If a Section 8(a)(5) case falls into such a category, the Region may, at its discretion, extend the procedures set forth in Memorandum OM 12-43 for cases involving 8(a)(1) and (3) discipline to that case and, after conducting a full investigation, submit the case to the Division of Advice.

If the charge does not allege 8(a)(1) or (3) discrimination or have a significant impact on employees' Section 7 rights, the Region may continue processing the case as it has processed deferred cases in the past. Thus, if the case was deferred under *Collyer*, and the charging party has failed to pursue the case through the grievance procedure, the charge should be dismissed. If the charging party contends that the case should be taken out of deferral status, but the charged party submits evidence that the case is being processed through the grievance procedure, the Region should, absent good cause to the contrary, continue deferring the case.⁶

Upon the conclusion of this process, please provide a report to DAGC Peter Margolies. The Region should use the Excel spreadsheet described above to generate the report. In the "Action Note" column it should set forth the current status of the case. The following notations should be used based upon the disposition of the case.

Dismissal for lack of cooperation	LOC dismissal
Dismissal on merits	Dismissal
Remains in grievance procedure	Grievance pending
Deferral revoked and investigation continuing	Deferral revoked
Submitted to Advice	Advice
Adjusted withdrawal	Withdrawal (adjusted)
Withdrawal	Withdrawal
Informal Settlement Agreement	Informal SA

The report should be submitted to DAGC Margolies by **Friday, June 7, 2013**. If you have any questions regarding this memorandum, please contact your AGC or Deputy. Thank you for your continued efforts to accomplish this important General Counsel initiative.

/s/
A.P.

⁶ If the Region believes that deferral is not appropriate for some other reason, i.e. the grievance arbitration procedure is broken, it should submit the case to Advice.

Attachments

To generate the list:

Region Action Type Action Status Issued Date and 3/12/2012 Supervisor Agent NLRA Section Go

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visor	Agent	Case Number	Case Name	Date Filed	Action Link	Action Status	Action Type	Deferral Issued Date	Note Date	Action Note	NLRA Section	Allegations Name
	GRIFFIN,JOSEPH	01-CA-044296	NSTAR Electric & Gas	11/13/2007		In Effect	Colyer	2/28/2008			8(a)(1)	Coercive Actions (Surveillance, etc)
											8(a)(3)	Changes in Terms and Conditions of Employment
	MELENDY,MELANIE	01-CA-044556	Verizon, Inc.	4/9/2008		In Effect	Colyer	5/21/2008			8(a)(1)	Coercive Rules
	MELENDY,MELANIE	01-CA-044612	Verizon, Inc.	4/29/2008		In Effect	Colyer	6/18/2008			8(a)(1)	Coercive Actions (Surveillance, etc)
											8(a)(3)	Changes in Terms and Conditions of Employment
	GOLDMAN,EMILY	01-CA-045221	Harvard University	2/10/2009		In Effect	Colyer	3/4/2009			8(a)(1)	Coercive Actions (Surveillance, etc)
											8(a)(3)	Changes in Terms and Conditions of Employment
	REYES,LUCY	01-CA-045431	Verizon Communications	5/27/2009		In Effect	Colyer	7/22/2009			8(a)(1)	Coercive Actions (Surveillance, etc)
											8(a)(5)	Refusal to Bargain/Bad Faith Bargaining (incrg surface bargaining/direct dealing)
LAURA	COLEY,JESSICA	01-CA-045549	FairPoint Communications, Inc.	7/29/2009		In Effect	Colyer	10/30/2009			8(a)(1)	Coercive Actions (Surveillance, etc)
											8(a)(5)	Reputation/Modification of Contract[Sec 8(d)/Unilateral Changes]
	REYES,LUCY	01-CA-045968	National Grid USA, Inc.	2/16/2010		In Effect	Colyer	3/29/2010			8(a)(1)	Coercive Actions (Surveillance, etc)
											8(a)(5)	Reputation/Modification of Contract[Sec 8(d)/Unilateral Changes]
	REYES,LUCY	01-CA-046004	National Grid	3/5/2010		In Effect	Colyer	4/7/2010			8(a)(1)	Coercive Actions (Surveillance, etc)
											8(a)(5)	Reputation/Modification of Contract[Sec 8(d)/Unilateral Changes]

After the list is generated, click the arrow key pointing to the right followed by the asterisk to display the entire list.

Region	Action Type	Action Status	Issued Date	Supervisor	Agent	NLRA Section	Go
		In Effect	Between and 3/12/2012 12:00				

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Supervisor	Agent	Case Number	Case Name	Date Filed	Action Link	Action Status	Action Type	Deferral Issued Date	Note Date	Action Note	NLRA Section	Allegations Name
GRIS, LAURA	GRIFFIN, JOSEPH	01-CA-044296	NSTAR Electric & Gas	11/13/2007		In Effect	Collyer	2/28/2008			8(a)(1)	Coercive Actions (Surveillance, etc)
											8(a)(3)	Changes in Terms and Conditions of Employment
	MELENDY, MELANIE	01-CA-044556	Verizon, Inc.	4/9/2008		In Effect	Collyer	5/21/2008			8(a)(1)	Coercive Rules
	MELENDY, MELANIE	01-CA-044612	Verizon, Inc.	4/29/2008		In Effect	Collyer	6/18/2008			8(a)(1)	Coercive Actions (Surveillance, etc)
											8(a)(1)	Coercive Actions (Surveillance, etc)
	GOLDMAN, EMILY	01-CA-045221	Harvard University	2/10/2009		In Effect	Collyer	3/4/2009			8(a)(3)	Changes in Terms and Conditions of Employment
											8(a)(1)	Coercive Actions (Surveillance, etc)
	REYES, LUCY	01-CA-045431	Verizon Communications	5/27/2009		In Effect	Collyer	7/22/2009			8(a)(5)	Refusal to Bargain/Bad Faith Bargaining (inclg surface bargaining/d
											8(a)(1)	Coercive Actions (Surveillance, etc)
	FOLEY, JESSICA	01-CA-045549	FairPoint Communications, Inc.	7/29/2009		In Effect	Collyer	10/30/2009			8(a)(5)	Repudiation/Modification of Contract[Sec 8(d)/Unilateral Changes]
SON, SCOTT	REYES, LUCY	01-CA-045968	National Grid USA, Inc.	2/16/2010		In Effect	Collyer	3/29/2010			8(a)(1)	Coercive Actions (Surveillance, etc)
											8(a)(5)	Repudiation/Modification of Contract[Sec 8(d)/Unilateral Changes]
	REYES, LUCY	01-CA-046004	National Grid	3/5/2010		In Effect	Collyer	4/7/2010			8(a)(1)	Coercive Actions (Surveillance, etc)
											8(a)(5)	Repudiation/Modification of Contract[Sec 8(d)/Unilateral Changes]
								6/18/2010			8(a)(1)	Coercive Actions (Surveillance, etc)
	GRIFFIN, JOSEPH	01-CA-046068	Harvard University	3/31/2010		In Effect	Collyer	1/3/2011			8(a)(3)	Changes in Terms and Conditions of Employment
											8(a)(1)	Coercive Actions (Surveillance, etc)
											8(a)(3)	Changes in Terms and Conditions of Employment
	FOLEY, JESSICA	01-CA-046229	Elmet Technologies Inc.	6/28/2010		In Effect	Collyer	8/30/2010			8(a)(1)	Coercive Actions (Surveillance, etc)
											8(a)(3)	Discipline
											8(a)(1)	Coercive Actions (Surveillance, etc)
											8(a)(1)	Coercive Actions (Surveillance, etc)
	VAN HAAREN, THOMAS	01-CA-046231	United States Postal Service	6/28/2010		In Effect	Collyer	8/11/2010			8(a)(5)	Repudiation/Modification of Contract[Sec 8(d)/Unilateral Changes]
												Repudiation/Modification of Contract[Sec 8(d)/Unilateral Changes]
	VAN HAAREN, THOMAS	01-CA-046270	United States Postal Service	7/21/2010		In Effect	Collyer	8/11/2010			8(a)(1)	Coercive Actions (Surveillance, etc)

Records 1 - 25

Refresh Print Download

To download it into an Excel spreadsheet, after the entire list has been displayed, click on the word “download”, and select the “Download to Excel” option.

The screenshot displays the Oracle NvGen Case Management System interface. The browser address bar shows the URL: https://nngen.nlr.gov/ePublicSector_enu/start.sw?SWCmd=Log. The interface includes a menu bar with options like File, Edit, View, Favorites, Tools, and Help. Below the menu bar, there are tabs for Home, Cases, Actions, Tasks, Suspensions, Contacts, Accounts, Document Search, Hot Topics & Issues, Incidents, Employees, Analytics, Special Projects, and Target Dates. The main content area shows a table of cases under the heading "Regional Management | Operations | Division of Advice | Agency". The table has columns for Case Name, Assignment, Case Number, Location, Date, Status, and Action. A dropdown menu is open over the "Download" link, showing options: Download Excel, Download to PowerPoint, Download to Excel 2000, Download Data, and Download Web Page (MHTML). The "Download Excel" option is highlighted.

Case Name	Assignment	Case Number	Location	Date	Status	Action
CESTARE, THOMAS	37 HON ASSIGNMENT, 37 HON	37-CA-008270	Convalescent Center of Honolulu	2/15/2011	In Effect	Download
OWENS, DANIEL	37 HON ASSIGNMENT, 37 HON	37-CA-008270	Convalescent Center of Honolulu	2/15/2011	In Effect	Download
COFFMAN, JILL	37 HON ASSIGNMENT, 37 HON	37-CA-008271	Kuakini Medical Center	2/22/2011	In Effect	Download
CESTARE, THOMAS	37 HON ASSIGNMENT, 37 HON	37-CA-008272	Kuakini Medical Center	2/22/2011	In Effect	Download
COFFMAN, JILL	37 HON ASSIGNMENT, 37 HON	37-CA-008272	Kuakini Medical Center	2/22/2011	In Effect	Download
BUFFIN, ROBERT	37 HON ASSIGNMENT, 37 HON	37-CA-008286	Queens Medical Center	3/21/2011	In Effect	Download
CESTARE, THOMAS	37 HON ASSIGNMENT, 37 HON	37-CA-008286	Queens Medical Center	3/21/2011	In Effect	Download
CESTARE, THOMAS	WOODCOCK, KATRINA	37-CA-008320	Kapiolani Medical Center for Women and Children	7/5/2011	In Effect	Download
CESTARE, THOMAS		37-CA-008331	Hawthorne Pacific Corp	7/6/2011	In Effect	Download
CESTARE, THOMAS	WOODCOCK, KATRINA	37-CA-008332	Black Stone Inc.	7/7/2011	In Effect	Download
CESTARE, THOMAS	WOODCOCK, KATRINA	37-CA-008339	Hawaiian Commercial & Sugar Company	7/26/2011	In Effect	Download
CESTARE, THOMAS	BURNS, MEREDITH	37-CB-002047	United Steelworkers (Local 12-90591-006) (Tesoro)	1/27/2011	In Effect	Download
CESTARE, THOMAS	BURNS, MEREDITH	37-CB-002048	United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers	1/27/2011	In Effect	Download

Exhibit A**Deferral Status Check Show Cause Letter –1 Year**

Regional Office letterhead

[Date issued]

Charging Party Legal Rep (or Charging Party if
no legal rep) Name and Address

Charged Party Legal Rep (or Charged Party if no
legal rep) Name and Address

Union Legal Rep (or Union Rep) Name and
Address (if charge filed by Individual)

Re: [Case name]

Case [Case number]

Salutation:

On [date deferral letter issued], the above matter was deferred pending resolution of the underlying dispute in the grievance/arbitration procedure. The matter has now been deferred for more than one year.

Position on Whether Deferral Should Be Revoked: Each party to this case is hereby requested to provide its position in writing by no later than **[14 days from date letter issues]** on whether, given the length of the deferral period, the deferral should be revoked and the case fully investigated. If there is a good reason for continued deferral, such as imminent arbitration of the matter, you should so state. You are encouraged, but not required, to e-file your position by going to the Agency's website at www.nlr.gov, clicking on **File Case Documents**, entering the NLRB Case Number, and following the detailed instructions.

If you have any questions concerning this matter, please contact [agent name], at [agent phone].

Very truly yours,

[RD name]
Regional Director

Exhibit B

Charging Party name and address

Discriminatee name and address (if applicable)

Case Name

Case No.:

Salutation:

The above captioned case was deferred to the parties' grievance-arbitration procedure on (date). Because the case has been deferred for more than one year, by letter dated (date), I requested that you set forth in writing your position as to whether deferral should be revoked and the case fully investigated. No response was received to my inquiry. Please be advised that if this office has not received your position as to whether this case should remain in deferral status by (two weeks from date of letter), I may dismiss the charge. You are encouraged, but not required, to e-file your position by going to the Agency's website at www.nlrb.gov, clicking on **File Case Documents**, entering the NLRB Case Number, and following the detailed instructions.

If you have any questions concerning this matter, please contact (agent name) at (agent phone).

Very truly yours,

(RD Name)

Regional Director